

Exhibit 4

Picard v. Merkin

Jason Orchard 10-8-13

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,
Debtor.

Adv.Pro.No.
08-01789 (BRL)

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IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff,

Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION of JASON L. ORCHARD, as
reported by NANCY C. BENDISH, Certified Court
Reporter, RMR, CRR and Notary Public of the States
of New York and New Jersey, at the offices of BAKER
HOSTETLER, 45 Rockefeller Plaza, New York, New York
on Tuesday, October 8, 2013, commencing at 10 a.m.

10:26:13 1 you started at Spring Mountain Capital?

10:26:17 2 A. Investment analyst.

10:26:19 3 Q. And what were your roles and
10:26:20 4 responsibilities at the time?

10:26:25 5 A. I was brought in to help perform due
10:26:31 6 diligence on hedge fund managers.

10:26:40 7 Q. Specifically what type of due
10:26:46 8 diligence were you asked to conduct on hedge fund
10:26:48 9 managers?

10:26:48 10 MR. KREISSMAN: Object to form,
10:26:50 11 vague.

10:26:52 12 A. I was asked to help perform both
10:26:57 13 qualitative and quantitative due diligence
10:27:01 14 functions.

10:27:08 15 Q. Did there come a time when your
10:27:10 16 position changed at Spring Mountain Capital?

10:27:13 17 A. Over time it has changed. I was
10:27:18 18 promoted first to an investment associate, I believe
10:27:21 19 it was. Then a principal. And today I'm the
10:27:27 20 managing -- a managing director in charge of the
10:27:30 21 hedge fund group. I also am the CFO of the firm.

10:27:43 22 Q. Do you recall when you were promoted
10:27:45 23 to investment associate?

10:27:50 24 A. 2006.

10:27:52 25 Q. And what were your responsibilities

10:27:55 1 when you were an investment associate?

10:27:59 2 A. To help formalize and lead the due
10:28:02 3 diligence efforts at -- of our hedge fund analyst
10:28:07 4 group.

10:28:18 5 Q. What do you mean by formalize?

10:28:20 6 MR. KREISSMAN: Object to form.

10:28:26 7 A. While a lot of the due diligence was
10:28:29 8 being carried out, we weren't consistently
10:28:33 9 memorializing a lot of our discussions with managers
10:28:36 10 and our findings in legal reviews. I helped to put
10:28:44 11 together a process that better institutionalized the
10:28:53 12 firm.

10:28:55 13 Q. And when did you -- when did you --
10:29:02 14 sorry.

10:29:02 15 When was this process put in place?

10:29:05 16 A. It evolved over time. It was a
10:29:08 17 process that was something I had learned at
10:29:12 18 Rutherford and that process I thought would be
10:29:16 19 helpful at Spring Mountain. So I tried to
10:29:18 20 incorporate it over time.

10:29:23 21 Q. Did you begin to incorporate it when
10:29:25 22 you became an investment associate?

10:29:27 23 A. I probably began to incorporate it
10:29:30 24 before I became an associate.

10:29:34 25 Q. And when did you become a principal?

10:29:43 1 A. I don't recall the exact timing. I
10:29:45 2 think it was around the beginning of 2008.

10:29:49 3 Q. And what were your responsibilities
10:29:51 4 as a principal?

10:29:55 5 A. Unfortunately, nothing changed. It
10:29:59 6 was a name change. I was at that time then put on
10:30:02 7 the investment committee as well.

10:30:14 8 Q. And when were you promoted to
10:30:17 9 managing director?

10:30:20 10 A. This year. I believe it was spring
10:30:23 11 of this year.

10:30:28 12 Q. And what about CFO?

10:30:30 13 A. I took over the CFO role when our CFO
10:30:34 14 retired at the end of 2011. So January 1st, 2012.

10:30:51 15 Q. You mentioned that you became a
10:30:53 16 member of the investment committee in 2008; is that
10:30:55 17 correct?

10:30:55 18 A. I believe that's correct.

10:30:58 19 Q. Prior to you joining the investment
10:31:00 20 committee, do you know who the members of the
10:31:02 21 investment committee were?

10:31:03 22 MR. KREISSMAN: Object to form as it
10:31:05 23 covers a broad time period, but you can answer the
10:31:07 24 question.

10:31:08 25 Q. From the time you started at Spring

11:44:53 1 MR. KREISSMAN: Object to form.

11:44:55 2 MS. PRINC: Objection.

11:44:56 3 A. No, I don't believe he had any
11:44:57 4 reviews -- or any input in any of that.

11:45:10 5 Q. Do you know whether Spring Mountain
11:45:11 6 Capital had any investments with any funds
11:45:14 7 associated with Mr. Merkin?

11:45:17 8 A. Yes.

11:45:20 9 Q. This is between 2004 and 2008.

11:45:23 10 A. Okay.

11:45:23 11 Q. What funds did Spring Mountain
11:45:26 12 Capital have investments with Mr. Merkin?

11:45:32 13 A. We had both onshore and offshore
11:45:35 14 funds, so all the four fund of fund products that
11:45:39 15 Ezra offered, Ascot LP, Ascot Limited, Gabriel and
11:45:43 16 Ariel.

11:45:51 17 Q. Which of those funds are the onshore
11:45:54 18 funds?

11:45:54 19 A. Ascot Fund LP and Gabriel.

11:45:57 20 Q. And which are the offshores?

11:46:01 21 A. Ascot Fund Limited and Ariel Fund,
11:46:04 22 Ltd.

11:46:06 23 Q. Was there any difference between the
11:46:09 24 investment strategies of Ariel and Gabriel?

11:46:14 25 MR. KREISSMAN: Object to form.

12:11:37 1 you know from your memory.

12:11:45 2 Q. The next email that's on 896 towards
12:11:48 3 the bottom of the page here, this is an email from
12:11:55 4 you to Seiichiro, correct?

12:12:00 5 A. Yup.

12:12:00 6 Q. You say that the first step would be
12:12:02 7 for the New York team to meet with Ezra. And that's
12:12:05 8 Mr. Merkin, correct?

12:12:07 9 A. That's correct.

12:12:09 10 Q. Do you recall whether you had any
12:12:14 11 discussions with anybody at Spring Mountain Capital
12:12:16 12 as to whether Aozora Bank should meet with
12:12:19 13 Mr. Merkin?

12:12:20 14 MS. PRINC: Object to form.

12:12:21 15 Q. As a result of this email.

12:12:23 16 MR. KREISSMAN: When you say "this
12:12:24 17 email," you're referring to the October 30 email?

12:12:28 18 MR. SONG: That's correct. The
12:12:29 19 original email from Seiichiro.

12:12:36 20 A. I believe I spoke to Greg and Launny
12:12:38 21 about that email and we determined that it would be
12:12:43 22 best that they talk to Ezra first.

12:12:46 23 Q. Did you have any discussions with
12:12:48 24 Mr. Merkin as a result of Mr. Takahashi's October 30
12:12:56 25 email about meeting with Bernie Madoff?

12:12:58 1 A. I did not.

12:12:59 2 Q. Do you know if Mr. Steffens or Mr. Ho
12:13:01 3 had any conversations with Mr. Merkin regarding
12:13:03 4 setting up a meeting to meet with Mr. Madoff on
12:13:06 5 behalf of Aozora Bank?

12:13:07 6 MS. PRINC: Object to form.

12:13:08 7 A. I don't know.

12:13:22 8 MR. KREISSMAN: Brian, we've been
12:13:23 9 going about an hour. Maybe finish this document and
12:13:26 10 then take our next break?

12:13:29 11 MR. SONG: Sure.

12:13:37 12 Q. Okay. If you go to the next page
12:13:39 13 which is 895, you see Mr. Takahashi's response to
12:13:52 14 you was that -- says: "Ezra could answer all of our
12:13:57 15 questions and we need to talk with Ezra for our
12:14:00 16 annual review purpose anyhow, but I think the point
12:14:03 17 is we have never met with Mr. Madoff and we have
12:14:07 18 only a little information what he does/how he does
12:14:13 19 it."

12:14:13 20 MR. KREISSMAN: It doesn't say "it."

12:14:18 21 A. Yes, I see the email.

12:14:18 22 Q. Do you know whether or not at this
12:14:19 23 point in time Aozora Bank had ever met with
12:14:22 24 Mr. Madoff?

12:14:22 25 MS. PRINC: Object to form.

12:14:24 1 A. I don't believe they had.

12:14:25 2 Q. Do you know why Aozora Bank wanted to
12:14:30 3 meet with Mr. Madoff even if Mr. Merkin answered all
12:14:35 4 of their questions?

12:14:35 5 MR. KREISSMAN: Object to form.

12:14:37 6 MS. PRINC: Object to form.

12:14:38 7 MR. KREISSMAN: Calls for
12:14:39 8 speculation.

12:14:41 9 A. To satisfy their -- the review of
12:14:43 10 their audit, their audit findings, their internal
12:14:47 11 audit findings.

12:14:53 12 Q. Then the next email on 894, there is
12:14:57 13 a response from you saying: "Understood and I will
12:15:03 14 what the earliest time Mr. Madoff can meet with Ino
12:15:06 15 and Morita." Is that correct?

12:15:09 16 A. Correct.

12:15:10 17 Q. Did you at this point in time
12:15:11 18 undertake to try to set up a meeting with
12:15:14 19 Mr. Madoff?

12:15:17 20 A. I spoke to Launny again about their
12:15:22 21 request and he was going to try to arrange it.

12:15:27 22 Q. And how was Mr. Steffens going to --
12:15:30 23 do you know how Mr. Steffens was going to arrange a
12:15:33 24 meeting with Mr. Madoff?

12:15:34 25 MR. KREISSMAN: Object to form.

12:15:35 1 A. He was going to speak to Mr. Merkin.

12:15:40 2 Q. And then the last page of this
12:15:41 3 document, 893 is Mr. Saitou's response. The first
12:15:48 4 line says: "Peter and Launny had a conversation
12:15:50 5 about Ascot. Maybe you have already heard the story
12:15:55 6 from Launny."

12:15:56 7 Do you have any recollection of a
12:15:59 8 conversation that Mr. Steffens had with you about
12:16:04 9 his conversation with Mr. Hagan?

12:16:07 10 MS. PRINC: Object to form.

12:16:08 11 MR. KREISSMAN: Same objection. I
12:16:09 12 assume you mean in or around the time of this email?

12:16:11 13 MR. SONG: As referenced in this
12:16:13 14 email.

12:16:13 15 MS. PRINC: Object to form.

12:16:15 16 A. I don't have any specific
12:16:16 17 recollection.

12:16:19 18 Q. Okay. Do you know whether or not
12:16:30 19 Aozora Bank ever got to -- ever had a meeting with
12:16:33 20 Mr. Madoff?

12:16:34 21 MS. PRINC: Object to form.

12:16:36 22 A. I don't believe a meeting with
12:16:37 23 Mr. Madoff ever happened.

12:16:50 24 MR. SONG: Okay. We can take a
12:16:51 25 break.

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01:49:09 1 Q. The next line says, "In the past,
01:49:11 2 Ascot executed these trades as well as allowed
01:49:14 3 Mr. Madoff to clear some of these trades through his
01:49:16 4 broker-dealer."

01:49:18 5 Is that, again, information you got
01:49:20 6 from Mr. Merkin?

01:49:22 7 A. Yes.

01:49:22 8 Q. And it says the execution --
01:49:24 9 "However, the execution ability of Madoff,
01:49:26 10 especially in the option market, has proven to have
01:49:30 11 done better than Ascot's own execution and,
01:49:32 12 therefore, the majority of the trade execution and
01:49:34 13 clearing is now done at Madoff Securities."

01:49:37 14 Is that something that Mr. Merkin
01:49:38 15 told you?

01:49:39 16 A. Yes.

01:49:46 17 Q. At this point in November of 2005 did
01:49:49 18 you understand whether or not Ascot -- sorry,
01:49:57 19 whether or not people working for Mr. Merkin were
01:50:00 20 executing trades on behalf of Ascot?

01:50:02 21 MS. PRINC: Object to form.

01:50:06 22 A. At this point I understood that
01:50:10 23 trades were primarily being done by Madoff
01:50:13 24 Securities and not Mr. Merkin or any of his
01:50:15 25 employees.

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01:50:51 1 Q. Did Mr. Merkin ever explain to you
01:50:53 2 why Mr. Madoff was better at executing trades?

01:50:58 3 MS. PRINC: Object to form.

01:51:06 4 A. He suggested that because he was --
01:51:08 5 Mr. Madoff was trading options regularly, he had
01:51:14 6 better execution in saleabilities.

01:51:24 7 Q. The next line says: "In executing
01:51:27 8 any one particular trade, the fund has a 12-minute
01:51:30 9 rule --" I'm sorry, 12 m-i-n, which I understand is
01:51:33 10 minute, "in which Ezra or Bernie have to establish
01:51:36 11 all three legs of the typical trade within 12
01:51:39 12 minutes, otherwise the trade legs established are
01:51:43 13 sold."

01:51:44 14 Is that information something you got
01:51:46 15 from Mr. Merkin?

01:51:48 16 A. It is.

01:51:48 17 Q. And did Mr. Merkin elaborate on why
01:51:53 18 he established a 12-minute rule?

01:51:56 19 MS. PRINC: Object to form.

01:51:58 20 A. The trades were generally meant to be
01:52:00 21 as low risk as possible. By establishing all three
01:52:06 22 legs, you've essentially created an arbitrage
01:52:12 23 position without taking much risk or having a
01:52:15 24 defined risk level. If you're unable to execute one
01:52:18 25 particular part of the leg, you have exposure, which

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01:52:25 1 could ultimately put your position at risk to go
01:52:29 2 outside of those risk parameters you've established.

01:52:32 3 So, if the position was not able to
01:52:34 4 be fully constructed within 12 minutes, it was
01:52:39 5 understood or explained to me that the trade -- the
01:52:44 6 legs of the trade that were put on were unwound to
01:52:47 7 reduce risk potential.

01:52:50 8 Q. Was this one of the parameters or
01:52:52 9 guidelines that Mr. Merkin gave to Mr. Madoff?

01:52:57 10 MS. PRINC: Object to form.

01:53:00 11 A. It wasn't specifically explained to
01:53:02 12 me that way, but it was a parameter that was
01:53:05 13 explained to me that the fund had established or a
01:53:09 14 guideline that was established by the fund.

01:53:20 15 Q. Under the Return Comments and Outlook
01:53:25 16 section, first sentence says: "Ezra told us that
01:53:27 17 the Ascot strategy has always benchmarked and
01:53:30 18 attempted to achieve a return greater than twice the
01:53:33 19 30-year Treasury."

01:53:36 20 Do you know why Mr. Merkin is using
01:53:38 21 the 30-year Treasury as a benchmark?

01:53:41 22 MS. PRINC: Object to form.

01:53:42 23 MR. KREISSMAN: Object to form, calls
01:53:44 24 for speculation.

01:53:46 25 A. I don't know why.

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01:54:00 1 Q. Next paragraph starts with, "Ezra did
01:54:02 2 say that he believes the Ascot strategy will stop
01:54:05 3 working one day."

01:54:07 4 Do you have -- do you recall
01:54:09 5 conversation with Mr. Merkin regarding Ascot -- the
01:54:12 6 Ascot strategy stopping working one day?

01:54:15 7 A. Yes.

01:54:16 8 Q. And what did Mr. Merkin tell you?

01:54:19 9 A. As with most arbitrage strategies,
01:54:24 10 they're generally -- a true arbitrage strategy is a
01:54:28 11 strategy in which risk is limited or where there's
01:54:30 12 very little risk at all. As more and more capital
01:54:35 13 is employed to exploit that arbitrage, it eventually
01:54:40 14 goes away.

01:54:43 15 Q. And did Mr. Merkin have a time
01:54:47 16 horizon in mind for which Ascot might stop working?

01:54:50 17 MR. KREISSMAN: Objection to form.

01:54:51 18 MS. PRINC: Objection.

01:54:52 19 MR. KREISSMAN: Calls for
01:54:55 20 speculation.

01:54:56 21 A. I don't recall.

01:55:13 22 Q. In that same paragraph where it says,
01:55:15 23 "The manager will either have to conceive of new
01:55:18 24 trading strategies or wind down as investment
01:55:21 25 opportunities become rarer and returns retreat to

01:55:24 1 cash-like levels."

01:55:25 2 Who is the manager that's being
01:55:27 3 referred to there?

01:55:28 4 A. Mr. Merkin.

01:55:38 5 Q. On the next page under Conclusion it
01:55:44 6 states that, "Although Ezra did not explicitly state
01:55:48 7 this, it appears that the true advantage of the
01:55:50 8 strategy is the ability to execute the trades."

01:55:53 9 Was that your opinion?

01:55:54 10 A. That was.

01:55:55 11 Q. And how did you form that opinion?

01:55:59 12 A. Through conversations or through our
01:56:02 13 conversation in meeting with Mr. Merkin.

01:56:20 14 Q. In the middle of that paragraph it
01:56:22 15 says: "It is rumored that the Madoff runs over ten
01:56:27 16 billion in this strategy in various managed
01:56:31 17 accounts." Do you see that?

01:56:32 18 A. Yes.

01:56:33 19 Q. Do you recall where you got that
01:56:34 20 information from?

01:56:38 21 A. I don't recall where that number
01:56:39 22 specifically came from, no.

01:56:41 23 Q. And what is a managed account?

01:56:43 24 A. A managed account is an account held
01:56:48 25 with an investment manager, although the assets are